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8 Attorneys for Plaintiffs MAJID MORTAZAVI,
9 SOODABEH MORTAZAVI and RANCHO
10 FARM CONSTRUCTION CORPORATION

11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 MAJID MORTAZAVI, an
15 individual; SOODABEH
16 MORTAZAVI, an individual; and
17 RANCHO FARM CONSTRUCTION
18 CORPORATION, a California
19 corporation,

20 Plaintiffs,

21 v.

22 FEDERAL INSURANCE
23 COMPANY, a New Jersey
24 corporation; CHICAGO TITLE
25 INSURANCE COMPANY, a
26 Nebraska corporation; STATE
27 NATIONAL INSURANCE
28 COMPANY, INC., a Texas
corporation, and DOES 1 through 20,
inclusive,

Defendants.

CASE NO. 3:13-CV-03141 GPC BGS

**FIRST AMENDED COMPLAINT
FOR:**

1. **BREACH OF CONTRACT;**
2. **BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING; AND**
3. **DECLARATORY RELIEF**

[JURY TRIAL DEMANDED]

COME NOW, Plaintiffs MAJID MORTAZAVI and SOODABEH
MORTAZAVI, by and through their counsel of record, Brian P. Worthington, and
complain as follows:

1. Plaintiff MAJID MORTAZAVI is, and at all times pertinent to this
Complaint was, a resident of San Diego County, California.

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1 2. Plaintiff SOODABEH MORTAZAVI is, and at all times pertinent to
2 this Complaint was, a resident of San Diego County, California. (Plaintiffs MAJID
3 MORTAZAVI and SOODABEH MORTAZAVI shall sometimes be referred to
4 hereinafter collectively as “the Mortazavis.”)

5 3. Plaintiff RANCHO FARM CONSTRUCTION CORPORATION
6 (“Rancho Farm”) is, and at all times relevant to this Complaint was, a California
7 corporation with its principal place of business in San Diego County, California.
8 (The Mortazavis and Rancho Farm shall sometimes be referred to herein collectively
9 as “Plaintiffs.”)

10 4. Defendant FEDERAL INSURANCE COMPANY (hereinafter
11 “Federal”) is a New Jersey corporation that, at all times pertinent to this Complaint
12 was, doing business in San Diego County, California.

13 5. Defendant CHICAGO TITLE INSURANCE COMPANY (hereinafter
14 “Chicago Title”) is a Nebraska corporation that, at all times pertinent to this
15 Complaint was, doing business in San Diego County, California.

16 6. Defendant STATE NATIONAL INSURANCE COMPANY, INC.
17 (hereinafter “State National”) is a Texas corporation that, at all times pertinent to this
18 Complaint was, doing business in San Diego County, California.

19 7. Plaintiffs do not presently know the true names and capacities of the
20 Defendants sued herein as Does 1 through 20, inclusive. Plaintiffs will seek leave of
21 court to amend this
22 Complaint to allege said Defendants’ true names and capacities as soon as Plaintiffs
23 ascertain them.

24 8. At all times mentioned herein, each Defendant was the agent and/or
25 employee of each and all of the other Defendants, and was acting in the course of
26 such agency and/or employment.

27 9. Venue is proper in this Court because: the Plaintiffs are residents of, or
28 have their principal place of business in, San Diego County; the insurance policies

involved in this case were issued in San Diego County, California; and the Defendants' obligations under the insurance-policy contracts at issue in this case were to be performed in San Diego County.

GENERAL ALLEGATIONS

A. The Federal Insurance Policy

10. Federal issued an insurance policy under which the Mortazavis are insureds. This is policy number 1367027001/01, effective for one year beginning October 21, 2010 (hereinafter "the Federal policy").

11. The Federal policy states: "We cover damages a covered person is legally obligated to pay for personal injury or property damage which take place anytime during the policy period and are caused by an occurrence, unless stated otherwise or an exclusion applies."

12. The Federal policy also states: "'Occurrence' means an accident or offense to which this insurance applies and which begins within the policy period. Continuous or repeated exposure to substantially the same general conditions unless excluded is considered to be one occurrence."

13. The Federal policy also states: "A 'covered person' means: [¶] you or a family member."

14. The Federal policy also states: "'Property damage' means physical injury to or destruction of tangible property, and the resulting loss of its use."

15. The Federal policy also states: "We will defend a covered person against any claim or suit seeking covered damages for personal injury or property damage or for covered damages under Employment practices liability, if Employment practices liability coverage is shown in the Coverage Summary. We provide this defense at our own expense, with counsel of our choice, even if the claim or suit is groundless, false, or fraudulent. We may investigate, negotiate, and settle any claim or suit at our discretion."

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B. The Chicago Title Policy

16. Chicago Title issued a title insurance policy under which the Mortazavis are insureds, policy number T128CL128 (hereinafter “Chicago Title policy”).

17. The Chicago Title policy states:

We insure you against actual loss resulting from:

- any title risks covered by this Policy-up to the Policy Amount

and

- any costs, attorneys’ fees and expenses we have to pay under this Policy

18. The Chicago Title policy also states:

This Policy covers the following title risks, if they affect your title on the Policy Date.

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
 - a mortgage or deed of trust
 - a judgment, tax, or special assessment
 - a charge by a homeowner’s or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date-unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.

11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure – other than a boundary wall or fence – because:
 - it extends on to adjoining land or on to any easement
 - it violates a restriction shown in Schedule B
 - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

19. The Chicago Title policy also states: We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense."

C. The State National Insurance Policy

20. State National issued several insurance policies under which the Plaintiffs are insureds. Those policies include, but may not necessarily be limited to, policy number NS1200058, effective for one year beginning September 17, 2008, and policy number NS1203368, effective for one year beginning September 17, 2009. (These policies, and any others under which any Plaintiff in this case is an insured, shall be referred to herein collectively as the "State National policies.")

21. The State National policies state: We will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies. We will have the right and duty to defend the insured against any 'suit' seeking those damages."

22. The State National policies also state: "This insurance applies to 'bodily injury' and 'property damage' only if: [¶] (1) The 'bodily injury' or 'property damage' is caused by an 'occurrence' that takes place in the 'coverage territory'; [¶]

(2) The ‘bodily injury’ or ‘property damage’ occurs during the policy period.”

23. The State National policies also state: “‘Occurrence’ means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

24. The State National policies also state: “‘Property damage’ means: [¶] a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it.”

D. The Sive Lawsuit

25. On January 13, 2012, a lawsuit was filed in the San Diego Superior Court entitled *Sive v. Mortazavi, et al.*, Case No. 37-2012-00090738-CU-OR-CTL. The Defendants in that lawsuit are Majid Mortazavi and Soodabeh Mortazavi, as individuals and as trustees for the Mortazavi Family Trust. In that lawsuit, Sive alleges that the Mortazavis purchased a parcel of land located at 13881 Rancho Capistrano Bend, San Diego, California 92130 (“the property”) from Pardee Homes (“Pardee”), and then constructed a home and other structures and improvements on the property. Sive alleges that some of the structures and/or improvements encroach onto an adjoining parcel of land owned by Pardee. The Complaint alleged causes of action for: 1) Rescission – Fraud; 2) Rescission – Negligent Misrepresentation; 3) Rescission – Mistake; 4) Breach of Contract; 5) Fraud; and 6) Negligent Misrepresentation. In the Prayer of the Complaint, Sive requested rescission of the purchase agreement for the property, that title to the property be transferred to the Mortazavis, and that Sive be awarded general, special, and punitive damages.

26. Majid Mortazavi and Soodabeh Mortazavi, as individuals and as trustees for the Mortazavi Family Trust UTD 07/14/2009, then filed a Cross-Complaint against Pardee. (That Cross-Complaint was later amended to add Rancho Pacifica Homeowners Association as a Cross-Defendant.) Pardee, in turn, filed a Cross-Complaint against Majid Mortazavi and Soodabeh Mortazavi, individually and

1 as trustees for the Mortazavi Family Trust UTD 07/13/2009. Pardee's Cross-
2 Complaint was later amended to add Rancho Farm as a Cross-Defendant. (The
3 Complaint and all related cross-actions shall hereinafter be referred to in total as the
4 "*Sive* lawsuit.")

5 27. The allegations made against the Mortazavis in the *Sive* lawsuit are
6 potentially covered under the Federal policy, and Federal is required to defend the
7 Mortazavis in that lawsuit. Pardee has alleged in the *Sive* lawsuit that the Mortazavis
8 constructed the property in such a way as to cause physical damage to land that
9 Pardee owns that is adjacent to the Property. Pardee's allegations constitute an
10 allegation of an occurrence because Pardee alleges, among other things, that the
11 Mortazavis constructed a garden wall in a negligent fashion and constructed that wall
12 in a way other than was intended. Pardee alleges that the construction of this wall in
13 this manner is the cause of physical damage to Pardee's property. The Mortazavis
14 are informed and believe and thereon allege that the alleged property damage
15 occurred, either in whole or in part, during the Federal policy period.

16 28. The allegations made against the Mortazavis in the *Sive* lawsuit are
17 potentially covered under the Chicago Title policy, and Chicago Title is required to
18 defend the Mortazavis in that lawsuit. Among other things, Sive and Pardee both
19 allege in the *Sive* lawsuit that the Mortazavis constructed structures, other than a
20 boundary wall or fence, that extend onto adjoining land. Sive and Pardee seek in that
21 lawsuit seek to force the Mortazavis to remove those structures.

22 29. The allegations made against the Plaintiffs in the *Sive* lawsuit are
23 potentially covered under one or both of the State National policies. All of the
24 Plaintiffs in this lawsuit are insureds under the State National policies for purposes of
25 the *Sive* lawsuit, and State National is required to defend all Plaintiffs in that lawsuit.
26 Pardee has alleged in the *Sive* lawsuit that the Plaintiffs constructed the property in
27 such a way as to cause physical damage to land that Pardee owns that is adjacent to
28 the Property. Pardee's allegations constitute an allegation of an occurrence because

1 Pardee alleges, among other things, that the Plaintiffs constructed a garden wall in a
2 negligent fashion and constructed that wall in a way other than was intended. Pardee
3 alleges that the construction of this wall in this manner is the cause of physical
4 damage to Pardee's property. The Plaintiffs are informed and believe and thereon
5 allege that the alleged property damage occurred, either in whole or in part, during
6 the policy period of one or both of the State National policies.

7 30. The Mortazavis tendered defense of the *Sive* lawsuit to Federal.

8 31. Federal declined to provide a defense to the Mortazavis, and has not
9 provided any defense to the Mortazavis, in the *Sive* lawsuit.

10 32. The Mortazavis tendered defense of the *Sive* lawsuit to Chicago Title.

11 33. Chicago Title declined to provide a defense to the Mortazavis, and has
12 not provided any defense to the Mortazavis, in the *Sive* lawsuit.

13 34. The Mortazavis tendered defense of the *Sive* lawsuit to State National.

14 35. State National declined to provide a defense to the Mortazavis, and has
15 not provided any defense to the Mortazavis, in the *Sive* lawsuit.

16 36. After Pardee amended its Cross-Complaint in the *Sive* lawsuit to add
17 Rancho Farm as a Cross-Defendant, Rancho Farm tendered defense of the *Sive*
18 lawsuit to State National. This tender also included a re-tender of defense on behalf
19 of the Mortazavis. (The tender on behalf of Rancho Farm, and re-tender on behalf of
20 the Mortazavis, shall be referred to herein as "the Rancho Farm tender.")

21 37. At the time the original Complaint was filed in this case, State National
22 had failed to respond to the Rancho Farm tender in any substantive manner. State
23 National, through its counsel, had acknowledged receipt of the Rancho Farm tender,
24 but nothing more. Despite that more than thirty (30) days had passed since the
25 Rancho Farm tender was sent to State National: State National had not advised
26 Plaintiffs whether it will defend or not; State National had not advised Plaintiffs as to
27 any investigation it had conducted since the Rancho Farm tender; and State National
28 had not advised Plaintiffs that any additional time is needed to evaluate the Rancho

1 Farm tender or why State National could not provide a timely decision as to whether
2 a defense will be provided to the *Sive* lawsuit. Moreover, Plaintiffs had attempted to
3 follow up with State National and requested an update as to the status of a response
4 to the Rancho Farm tender, but State National, to that point, had ignored and failed
5 to respond to this follow-up request for a response. After the Complaint was filed,
6 State National responded to the tender, and refused to provide a defense or indemnity
7 for the *Sive* lawsuit to any of the Plaintiffs.

8 38. Because Federal, Chicago Title, and State National have refused to
9 provide a defense to any of the Plaintiffs in the *Sive* lawsuit, the Plaintiffs have been
10 forced to incur attorney's fees and other costs to defend themselves in that lawsuit.

11 39. The Plaintiffs have also incurred, and continue to incur, attorney's fees
12 and other expenses in pursuit of the policy benefits owed to them under the Federal
13 policy, the Chicago Title policy, and the State National policies.

14 **FIRST CAUSE OF ACTION**
15 **BREACH OF WRITTEN CONTRACT**
16 **(As to All Defendants)**

17 40. The Plaintiffs hereby incorporate paragraphs 1 through 39, above, as
18 though set forth in full herein.

19 41. The Plaintiffs entered into valid written contracts with the Defendants,
20 and each of them, in the form of the Federal policy, the Chicago Title policy, and the
21 State National policies.

22 42. The Defendants, and each of them, have breached these written
23 contracts in that they have failed to defend and have failed to indemnify the Plaintiffs
24 in the *Sive* lawsuit where the contracts require them to do so.

25 43. The Defendants' performance under the Federal policy, the Chicago
26 Title policy, and the State National policies has not been excused.

27 44. The Plaintiffs have fully performed all of their obligations under the
28 Federal policy, the Chicago Title policy, and the State National policies.

46. The Plaintiffs hereby incorporate paragraphs 1 through 45, above, as though set forth in full herein.

48. The Defendants have breached the implied covenants contained in their insurance policies in that Defendants have acted unreasonably in denying a defense and/or indemnity to the Plaintiffs where Defendants were required to do so. Defendants acted unreasonably in that, among other things:

b. In denying or otherwise refusing insurance coverage to the Plaintiffs for the *Sive* lawsuit, Defendants acted arbitrarily and in conscious disregard

1 of the facts, circumstances and allegations in the *Sive* lawsuit and California law
2 regarding their obligations under their respective insurance policies;

3 c. In denying insurance coverage to the Plaintiffs for the *Sive*
4 lawsuit, Defendants put their own interests ahead of those of the Plaintiffs, their
5 insureds, and denied or otherwise refused coverage to the Plaintiffs in circumstances
6 where Defendants knew, or through exercise of a reasonable investigation and
7 evaluation should have known, that they owed a duty to defend or indemnify the
8 Mortazavis in the *Sive* lawsuit;

9 d. Defendants denied or otherwise refused a defense and/or
10 indemnity to the Plaintiffs for the *Sive* lawsuit unreasonably and without good cause;
11 and

12 e. State National unreasonably refused and failed to provide a
13 timely response to the Plaintiffs to the Rancho Farm tender, unreasonably and
14 unjustifiably delayed in responding to the Rancho Farm tender, and unreasonably
15 failed to respond timely to the Plaintiffs' follow-up request for a response to the
16 Rancho Farm tender.

17 49. As a direct and proximate result of the Defendants' conduct, the
18 Plaintiffs have suffered damages, including but not limited to: economic loss
19 (including not only the costs of defending the *Sive* lawsuit but also attorney's fees
20 incurred in pursuing Defendants for policy benefits that the Defendants have
21 tortuously denied), emotional distress, stress, nervousness and worry, headaches and
22 stomachaches, and loss of sleep. The damages Plaintiffs have suffered are in an
23 amount according to proof at trial, but in any event in excess of \$25,000.00.

24 50. Defendants acted intentionally in denying coverage to the Plaintiffs, and
25 did so purposely so as to avoid responsibility for incurring the expense of defending
26 and/or indemnifying the Plaintiffs. Defendants' conduct was designed specifically to
27 deprive the Plaintiffs' of the benefits they were entitled to under the insurance
28 policies, so that Defendants would not incur financial expense. Defendants did this

1 knowing that their wrongful denial of coverage to the Plaintiffs would cause the
2 Plaintiffs economic loss and hardship, as well as emotional distress, stress,
3 nervousness and worry. Defendants' conduct in this regard rises to the level of
4 oppression, fraud or malice, and Defendants are, accordingly, subject to exemplary
5 and/or punitive damages.

6 **THIRD CAUSE OF ACTION**
7 **DECLARATORY RELIEF**
8 **(As to All Defendants)**

9 51. The Plaintiffs hereby incorporate paragraphs 1 through 50, above, as
10 though set forth in full herein.

11 52. An actual and present controversy has arisen and presently exists
12 between the Plaintiffs and Defendants in that: the Plaintiffs contend that Defendants
13 are required to defend and/or indemnify the Plaintiffs for the *Sive* lawsuit, and
14 Defendants contend that they have no obligation to defend or indemnify the
15 Plaintiffs.

16 53. The Plaintiffs seek a judicial declaration as to the rights and obligations
17 of the various parties under the Defendants' insurance policies.

18 WHEREFORE, Plaintiffs MAJID MORTAZAVI, SOODABEH
19 MORTAZAVI and RANCHO FARM CONSTRUCTION CORPORATION pray for
20 judgment as follows:

- 21 1. For actual and compensatory damages in an amount to be proven at
22 trial;
23 2. For costs of suit, including reasonable attorney's fees;
24 3. For exemplary and/or punitive damages; and
25 4. For such other and further relief as the Court may deem proper.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

Dated: March 31, 2014

WORTHINGTON LAW OFFICES

By: s/ Brian P. Worthington
Brian P. Worthington, Esq.
Attorneys for Plaintiffs
MAJID MORTAZAVI, SOODABEH
MORTAZAVI and RANCHO FARM
CONSTRUCTION CORPORATION

CERTIFICATE OF SERVICE

I am now, and at all times herein mentioned, over the age of eighteen (18) years, a resident of the County of San Diego; not a party to the within action or cause; and that my business address is 7676 Hazard Center Drive, Suite 900, San Diego, CA 92108.

On March 31, 2014, I caused to be served the following document:

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO STATE NATIONAL INSURANCE COMPANY, INC.'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE, RULE 12(b)(6)**

on the parties in said action as follows:

[X] BY ELECTRONIC TRANSMISSION VIA NEF. Pursuant to Court Rule, I electronically filed the foregoing document through the Court's CM/ECF system, which sent a Notification of Electronic Filing to the persons at the email addresses listed below:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 31, 2014 at San Diego, California.

s/ Brian P. Worthington